

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION**

CIVIL NO. 1:09CV100

JERRY B. WHITTINGTON,)	
)	
Plaintiff,)	
)	
Vs.)	<u>ORDER OF DISMISSAL</u>
)	
MICHAEL J. ASTRUE, Commissioner)	
of Social Security,)	
)	
Defendant.)	
<hr style="width:40%; margin-left:0"/>)	

THIS MATTER is before the Court on the Defendant's motion to remand pursuant to sentence six of 42 U.S.C. § 405(g), and Plaintiff's motion to dismiss pursuant to Fed. R. Civ. P. 41(a)(2), both motions having been filed July 16, 2009.

Defendant seeks remand of the case for further administrative action and notes in the motion that Plaintiff does not consent to such remand. Instead, Plaintiff moves to dismiss this action, stating that he is now receiving full disability benefits based on a favorable decision issued October 30, 2008, and he "elects not to further litigate an earlier onset date

of disability.” The Plaintiff further notes that the Defendant’s counsel has consented to dismissal of the action.

For the reasons stated in Plaintiff’s motion, and the Defendant having consented to the relief sought therein,

IT IS, THEREFORE, ORDERED that the Defendant’s motion to remand is **DENIED**.

IT IS FURTHER ORDERED that the Plaintiff’s motion to dismiss pursuant to Fed. R. Civ. P. 41(a)(2) is **ALLOWED**, and this matter is hereby **DISMISSED**.

Signed: July 16, 2009

A handwritten signature in dark ink, appearing to read 'L. H. Thornburg', is written over a horizontal line.

Lacy H. Thornburg
United States District Judge

